IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2013 OF 1992

Bhima H. Vadari ..Petitioner

versus

State of Maharashtra & Ors. ..Respondents

Mr. M. A. Patil for the Petitioner.

Mr. A. P. Vanarase, AGP for the Respondents No. 4 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 14TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and learned AGP for the Respondents No. 4 - State.

2. By this petition, the Petitioner is challenging the Order of the Additional Commissioner, Kokan Division, Bombay, dated 24.2.1992. That Order is at Exhibit ’E’ to the petition. It was an order in Appeal No. 14 of 1991. The Appellants before the Additional

Commissioner, Kokan Division, Bombay were M/s. Byramjee Jeejebhoy Pvt. Ltd. and the petitioner was the Respondent No.3. Appeal was preferred against the Order of the Deputy Collector (Appeals) BSD, Bombay, dated 7.12.1990, by which Appeal of M/s. Byramjee Jeejeebhoy Pvt. Ltd. was dismissed and the Orders of the Additional District Deputy Collector, BSD, Bombay, dated 10.6.1981 and 31.3.1990, were confirmed.

3. The Additional District Deputy Collector has levied non-agricultural assessment at the rate of Rs.16/- per 100 sq. meters from 1.8.1978 onwards till non-agricultural rates are revised in respect of land admeasuring 210 sq. meters out of Survey No. 48, Hissa No.4/pt., City Survey No. 24/pt. of Village Oshivara belonging to the Appellants. The contention of the Appellants M/s. Byramjee Jeejeebhoy Pvt. Ltd. that the present Petitioner who was the Respondent No.3 before the Additional Commissioner has no legal status, but his contention was that he was carrying on business of garage on the suit land since last 13-14 years i.e. 13-14 years prior to 1991. It appears from the Order of the Additional Commissioner that the Additional

Commissioner was concerned with the issue of conversion of land from agricultural to non - agricultural. If the Respondent No.3 i.e. the present petitioner was unauthorisedly occupying the land of M/s. Byramjee Jeejeebhoy Pvt. Ltd., then it was for them to start legal proceedings for eviction, and, therefore, in that background the Additional Commissioner rightly held that the State cannot be called upon to exercise powers under Section 259 of the Maharashtra Land Revenue Code, 1966, as against the present Petitioner. The Additional Commissioner, therefore, rightly advised Appellants M/s. Byramjee Jeejeebhoy Pvt. Ltd. to take action for encroachment as prescribed by law.

4. It is clear from the Order of the Additional Commissioner that so far as the present Petitioner is concerned, there is no order of eviction against him. M/s. Byramjee Jeejeebhoy Pvt. Ltd. has been given liberty to take action for eviction against the Petitioner. Needless to say that that will be the action according to the law. Therefore, if M/s. Byramjee Jeejeebhoy Pvt. Ltd. takes action against the petitioner, they will give notice of the same and the petitioner has a right to defend his right

and title whatever that may be. In view of this, nothing to interfere in this Petition. Interests of the petitioner and that of M/s. Byramjee Jeejeebhoy Pvt. Ltd. are totally different. Therefore, petition is dismissed. Rule is discharged accordingly. No order as to costs.

(D. G. DESHPANDE, J.)